266793 - He issued a conditional divorce and forgot what he said

the question

We had 1 talaq. After 6 months my husband said if you go you are divorced. I left. We were bit careless but also I didn't know much of conditional talaq and it was our 2nd incident of talaq so I was't worrried. I thought if it's a talaq still it'll be only 2nd. It often bothered me but I couldn't ask him. After few years we had 1 more talaq then I asked him about the conditional divorce. First he didn't remember it since the incident was few years old. Then he said that he said free. I told my husband that some ulima say word talaq depends on intention in conditional talaq. Then he said; I said free and I don't remember if I said word talaq but if I said word talaq I didn\'t intend it. He also said why you didn't remind me before 3rd incident. I know his words are taken about his intention because he knows better but does same ruling apply in our situation like, he forgot. I know he said word talaq so to me he forgot and our 3rd incident occured after few years so by the time if he can forget his word then now he can forget his intention too. In your opinion conditional talaq depends on intention but my question is; If I clearly remember that he said word talaq when he said if you go you are divorced and he doesn't remember because he says he said free then should his statement about his intention that he said free but if he said word talaq he didn't intend it, still be acceptable, even he FORGOT his word because he says he said free, while I remember he said word talaq

Detailed answer

Praise be to Allah.

If a man says to his wife, “If you go, then you are divorced,” this is a divorce that is dependent on a condition.

The majority of scholars are of the view that it counts as a divorce if she goes.

Some of the scholars are of the view that it depends on the husband's intention. If he did not intend divorce – rather he intended to prevent her from going – then it comes under the ruling on oaths, and if she goes, he must offer expiation for breaking an oath (kaffarat yamin).

This is the view favoured by Shaykh al-Islam Ibn Taymiyah, and it is the basis on which we give answers on our website.

Based on that, if the husband says that he did not intend divorce when he said that, or he forgot what he said, and he says, "Assuming that I said that, I did not intend divorce," then it does not count as a divorce; rather he must offer expiation for breaking an oath.

What appears to be the case from your question is that your husband is certain that he did not intend divorce, even if he has forgotten what he actually said.

Based on that, no divorce has taken place.

But if even we assume that the word of divorce was very clear and the divorce took place as soon as he uttered the word of divorce, meaning that it was not dependent on anything, and he used clear words of divorce, then the woman must count this as a divorce, even if the husband forgot what he said, because a clear statement of divorce which took place immediately is not dependent on what the husband intended.

See also the answer to question no. 116641 .

And Allah knows best.